IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 2483 of 2007(U)

AGAINST THE ORDER DATED 05/12/2006 IN IA 961/2006 IN OS.13/2005 of SUB COURT, HOSDRUG

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PETITIONER:

LAINAKILILLATH HASSINAR,
REP.BY HIS WIFE BEEFATHIMA, AGED 55 YEARS,
W/O. HASSINAR, RESIDING AT ARANGADI,
KANHANGAD VILLAGE, HOSDURG TALUK,KASARAGOD DIST.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS:

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1. **POYYAKKARA ILLATH DAINABI,**
   AGED 74 YEARS, W/O. POYYAKKARA ILLATH ABDULLA,
   MEETHALAPURA, P.O. MANIKOTH, AJANUR VILLAGE,
   KASARAGOD DISTRICT.

2. **M.B. AHAMED, AGED 54 YEARS,**
   S/O. PYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
   P.O. MANIKOTH, AJANUR VILLAGE, KASARAGOD DISTRICT.

3. **AMINA, AGED 52 YEARS,**
   D/O.POYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
   P.O. MANIKOTH, AJANUR VILLAGE,KASARAGOD DISTRICT.

4. **ABDUL SHUKKUR, AGED 51 YEARS,**
   S/O.POYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
   P.O. MANIKOTH, AJANUR VILLAGE, KASARAGOD DISTRICT.

5. **MUHAMMED KUNHI, AGED 48 YEARS,**
   S/O. POYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
   P.O. MANIKOTH, AJANUR VILLAGE.

6. **ABDUL KHADER, AGED 40 YEARS,**
   S/O.POYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
   P.O. MANIKOTH, AJANUR VILLAGE, KASARAGOD DISTRICT.

7. ABDUL MAJEED, AGED 38 YEARS,
S/O. POYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
P.O. MANIKOTH, AJANUR VILLAGE, KASARAGOD DISTRICT.

8. HASSINAR, AGED 35 YEARS,
S/O. POYYAKKARA ILLATH ABDULLA, MEETHALAPURA,
P.O. MANIKOTH, AJANUR VILLAGE.

9. ASHARAFF, AGED 30 YEARS,
S/O. POYYAKKARA ILLATH ABDULLA, MEETHALAPURAM,
P.O. MANIKOTH, AJANUR VILLAGE, KASARAGOD DISTRICT.

10. MOILAKIRIYATH AMINA, AGED 74 YEARS,
W/O. POYYAKKARA ILLATH HAJI MAMMUNHI MUSLIYAR,
RESIDING AT PALAKKI, P.O. MANIKOTH,AJANUR VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.

11. MARIYUMA, AGED 54 YEARS,
D/O. POYYAKKARA ILLATH HAJI MAMMUNHI MUSLIYAR,
RESIDING AT PALAKKI, P.O. MANIKOTH,AJANUR VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.

12. AYISU, AGED 50 YEARS,
D/O. POYYAKKARA ILLATH HAJI MAMMUNHI MUSLIYAR,
RESIDING AT PALAKKI, P.O. MANIKOTH,AJANUR VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.

13. KUNHASIYA, AGED 35 YEARS,
W/O. HANNEFA, RESIDING AT PALAKKI, P.O. MANIKOTH,
KASARAGOD DISTRICT.

14. ALEEMA, AGED 76 YEARS,
W/O. BALEDATH ANTHUKKA ALIAS ABDUL KHADER,
RESIDING AT BALEDATH VALAPPIL, P.O. MANIKOTH,
AJANUR VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT.

15. KUNHABDULLAH, AGED 65 YEARS,
S/O. MARIYUMMA, RESIDING AT BALLA KADAPPURAM,
P.O. KANHANGAD, KASARAGOD DISTRICT.

16. KHADEEJA, AGED 60 YEARS,
W/O. IBRAHIM HAJI, RESIDING AT KAZHAL NAGAR,
KASARAGOD DISTRICT.

17. AISU, AGED 63 YEARS,
W/O. MUTTUMTHALA KUNHABDULLA, MUTTUMTHALA,
KASARAGOD DISTRICT.

18. MOIDU, AGED 45 YEARS,
S/O. MARIYUMMA, RESIDING AT PADENEKKAD,
KANHANGAD VILLAGE, KASARAGOD DISTRICT.

19. KHADERKUTTY, AGD 14 YEARS,
S/O. MARIYUMMA, RESIDING AT BALLA KADAPPURAM,
KANHANGAD VILLAGE, HOSDURG TALUK, KASARAGOD DIST.

*ADDL.R20 TO R28 ARE IMPLEADED:

R20. MARIYAM, AGED 65 YEARS,
W/O.LATE KUNHABDULLA,
P.O.BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

R21. FATHIMA, AGAAED 43 YEARS,
W/O.ANTHUMAN,
BEKAL, P.O.PALLIKKARA,
PIN – 671 316.

R22. SUBAIDA, AGED 39 YEARS,
W/O.MOIDU,
IQBAL ROAD, P.O. KOLAVAYAL,
(VIA) KANHANGAD.

R23. KUNHAMED,
AGED 37 YEARS,
S/O.LATE KUNHABDULLA,
P.O.BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

R24. NASSAR, AGED 35 YEARS,
S/O.LATE KUNHABDULLA,
P.O.BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

R25. SUBAIR, AGED 32 YEARS,
S/O.LATE KUNHABDULLA,
P.O.BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

R26. NASEEMA, AGED 29 YEARS,
D/O.LATE KUNHABDULLA,
P.O.BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

R27. SHIHAB, AGED 26 YEARS,
S/O.LATE KUNHABDULLA,
P.O.BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

R28. SUHAIL, AGED 24 YEARS,
S/O.LATE KUNHABDULLA,
P.O. BALLA KADAPPURAM,
NEAR MOSQUE, BEACH ROAD,
(VIA) KANHANGAD.

(*ADDL.R20 TO R28 ARE IMPLEADED AS PER ORDER DTD. 12/04/2007 IN I.A.NO.5109/07)

BY ADV. SRI.V.N.RAMESAN NAMBISAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.2483/2007 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE I.A.961/2006 IN O.S.13/2005 OF SUB COURT, HOSDURG.**

EXT.P2: **CERTIFIED COPY OF THE ORDER IN I.A.961/2006 IN O.S.13/2005 DTD. 5/12/2006 OF SUB COURT, HOSDURG.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 2483 OF 2007

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Dated this the 16th day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Hosdrug in I.A.961/06 in O.S.13/05. The suit is one for partition. The present application is filed by the wife of the plaintiff with the averment that the plaintiff after the institution of the suit is suffering from dementia and therefore he is not able to conduct the case for himself and so she be appointed as a guardian as contemplated under Order 32 of the CPC. It is opposed by the other side.

2. In the Court below, as per Order 32 Rule 15, the plaintiff was called and questions were put to him and the learned Subordinate Judge found that he was able to answer all the questions correctly except one question where he failed to answer who is the defendant. PW2, the doctor who has issued Ext.A1 certificate on cross-examination had deposed that the person was suffering from memory loss and the Court below did not accept the evidence of PW2 but

concluded that the plaintiff is in a position to look after himself. If it is dementia/schizophrenia it can recur at any time and it is a peculiar disease which surfaces on lucid intervals. When he was summoned and examined before Court, the Court below was of the opinion that he is able to understand the consequences of his action and further that his conduct in filing another suit before another Court are all indicative of the factum of his stability of mind and therefore rejected the application for representing her as a guardian. On facts I cannot differ from the said finding but at the same time since the allegation is of a dementia which occurs during the lucid intervals, if it resurfaces, certainly the Court has to consider it at that point of time also regarding his mental fitness to continue the proceedings. Even otherwise, in a case of this nature if he is not in a position to give evidence, the Court can permit his wife to be examined as witness on his behalf to give evidence. These are all matters

which comes within the realm of the trial judge, that discretion has to be used judiciously. With this observation the writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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